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8 UNITED STATES DISTRICT COURT  
9 FOR THE EASTERN DISTRICT OF CALIFORNIA  
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11 MICHAEL ALLEN YOCOM,

12 Petitioner,

13 v.

14 KATHLEEN ALLISON,

15 Respondent.  
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Case No. 1:21-cv-00187-NONE-HBK

ORDER DENYING PETITIONER'S MOTION  
FOR EVIDENTIARY HEARING

(Doc. No. 46)

ORDER DENYING PETITIONER'S MOTION  
FOR RELEASE FROM CUSTODY

(Doc. No. 46)

ORDER TO SHOW CAUSE WHY  
SANCTIONS SHOULD NOT BE IMPOSED  
ON PETITIONER

ORDER TO FILE REPLY OR STAND ON  
INCORPORATED REPLY IN MOTION

22 Petitioner Michael Allen Yocom, a state prisoner proceeding *pro se*, has pending a  
23 petition for writ of habeas corpus under 28 U.S.C. § 2254. (Doc. No. 1). Before the Court is  
24 Petitioner's "emergency motion for teleconference or actual court hearing" and "demand for  
25 immediate release," which the Court construes as a motion for an evidentiary hearing and release  
26 from custody. (Doc. No. 46). As explained below, the Court denies Petitioner the relief  
27 requested in his motion and orders him to show cause why sanctions should not be imposed for  
28 his continued filing of duplicitous motions.

### 1                                    **1. Court Construes Motion to Incorporate Petitioner's Reply**

2            At the outset, the Court notes the pleading is titled “Emergency Motions” and “Initial  
3    Reply to Respondent’s Answer.” (Doc. No. 46 at 1). In his pleading, Petitioner addresses  
4    Respondent’s Answer to the Petition and advances arguments in rebuttal to the Answer. (*See*  
5    *generally* Doc. No. 46). Thus, the Court construes this filing as incorporating Petitioner’s reply  
6    or traverse to Respondent’s Answer. Nonetheless, Petitioner fashions the pleading as his “Initial  
7    Reply to Respondent’s Answer.” (*Id.* at 1). The Rules Governing Section 2254 Cases do not  
8    provide petitioners with multiple opportunities to reply to an answer. *See* R. Governing Section  
9    2254 Cases Rule 5(e). In an abundance of caution, the Court will permit Petitioner the  
10   opportunity to file a free-standing reply titled “Reply to Respondents’ Answer” within 21 days  
11   from receipt of this Order, to the extent Petitioner does not intend the pleading to incorporate his  
12   reply.

### 13                                    **2. Motion for Evidentiary Hearing**

14            Petitioner seeks an emergency evidentiary hearing. (Doc. No. 42). Petitioner has  
15   previously moved for an evidentiary hearing five times, all of which have been denied. (Doc.  
16   Nos. 8, 20, 33, 40, 42). Evidentiary hearings are granted only under limited circumstances in  
17   habeas proceedings. *See* 28 U.S.C. § 2254(e)(2)(A)(ii). Although Respondent has now filed an  
18   answer to the petition, the Court has not yet reviewed the briefing. The Court will review the  
19   briefing and make findings and recommendations in due course. If the Court determines that an  
20   evidentiary hearing is warranted, it will schedule one at that time. *See* Rules Governing Section  
21   2254 Cases, R. 8(a).

### 22                                    **3. Motion for Release from Custody**

23            Incorporated within Petitioner’s motion is a second request for release from custody.  
24   (Doc. Nos. 42 at 1, 46 at 1). As stated in this Court’s June 8, 2021 order, “[b]ail pending a  
25   decision in a habeas case is reserved for extraordinary cases involving special circumstances or a  
26   high probability of success.” *Land v. Deeds*, 878 F.2d 318, 318 (9th Cir. 1989); (Doc. No. 44 at  
27   2). The Court finds Petitioner has not demonstrated special circumstances warranting his release  
28   or a high probability of success on the merits of his petition. Accordingly, his request is denied.

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Accordingly, it is **ORDERED**:

1. Petitioner's motion for evidentiary hearing (Doc. No. 46) is DENIED.
2. Petitioner's motion for release from custody (Doc. No. 46) is DENIED.
3. Within fourteen (14) days of the date of receipt of this order, Petitioner is ordered to show cause why he should not be subject to sanctions.
4. Within twenty-one (21) days of receipt of this Order, Petitioner shall file a Reply to Respondent's Answer. If Petitioner does not file a separate free-standing Reply, the Court will construe the reply incorporated in Petitioner's Motion (Doc. No. 46) as his Reply to Respondent's Answer to Petition.

Helena M. Barch-Kuchta  
HELENA M. BARCH-KUCHTA  
UNITED STATES MAGISTRATE JUDGE